



BUILDING AMERICA®

August 20, 2020

via email

Montana Legislature – Energy and Telecommunications Interim Committee

Re: Utility Crossings and Railroad Right of Way

Esteemed Committee Members:

Union Pacific Railroad Company (UP) respectfully submits the following comments regarding the proposed language for utility crossing of railroad right of way. While UP understands the need for expanded utility access, the current draft under review unreasonably limits UP's ability to negotiate – or in some cases, reject – crossing applications for reasons related to safety and operations.

The Association of American Railroads has developed [this overview](#) of the broadband and utility crossing permit processes for each North American rail carrier as a resource for utilities (copy attached via email). The processes exist to ensure the crossings are done safely and do not adversely impact current or future rail operations.

BNSF Railway and Montana Rail Link have offered comments regarding the constitutional and legal concerns with the proposed language. We unconditionally concur with such comments. In addition, we offer for your consideration practical safety, operational, and property concerns arising from the proposal. Unquestionably, adoption of this draft bill language presents serious concerns for the safe operations of rail freight across Montana for the following reasons:

Lack of defined engineering standards for utility crossings.

- Safety is UP's primary concern. Engineering standards applied to utility crossings are based on the American Railway Engineering and Maintenance of Way Association (AREMA) Manual for Railway Engineering.
- UP must maintain the ability to reject a crossing application or request further engineering work be undertaken if proposed engineering specs do not meet AREMA requirements.
- In addition, locations of the crossing, interference with railroad operations, or safety are reasons for a rejected application (including areas outside of AREMA standards).
- Without an engineering standard, proposals are incomplete and if allowed to move forward under statute, will result in unsafe rail corridors.

One-size-fits-all approach does not consider utilities' impacts on rail operations.

- Railroads are uniquely qualified to understand what lies beneath their property, and what may be planned on or near their property in the future, such as adding a second track or new industrial leads for planned development.
- Railroads are best positioned to understand the impact of different utilities as they enter our right of way. Variability such as size of conduit, location, depth of bore and potential for electrical or systemic impact are all part of each railroad's review process.

Allowing utility crossings without rail approval poses safety risks.

- Section 2 of the draft states that railroad approval is not needed for crossings in a public right of way, which creates safety risks. To mitigate these risks, railroads must review and approve each application.
- Proper review, approval and oversight by the railroads is needed to prevent derailment risk from boring along, across, or adjacent to railroads and disrupting track, ballast and road bed.
- Electrical signal and currents can compromise crossing signal systems, creating safety risks at road crossings: the very place where the traveling public most frequently interacts with train traffic.

Proposal ignores railroad costs and property rights, requiring railroads to subsidize utilities.

- The draft references “reasonable regulation” and “compensation” but limits fees to \$750 without regard for the specifics of the crossing, actual costs, property value or other factors.
- UP expenses include engineering review, flagging, inspecting a crossing site before, during and after construction, reviewing real estate records and entering the new crossing on UP’s books, maps and property records, and other administrative costs.
- As outlined in the letter from BNSF and MRL, railroads are private property owners and have the same rights as any property owner to receive compensation for use of our property.
- If enacted, this practice will require one industry to subsidize another’s business practices.

Railroad application review time must be considered

- Our reply time is 30-45 days from receipt of completed application to delivery of an agreement to the utility for signature.
- Non-standard requests and incomplete applications take longer.
- Requests for additional engineering work are returned in 30-45 days.
- In all cases, elapsed time depends on quality and accuracy of application.

While some argue that all companies in the rail industry should have a single process for utility crossing applications, as private companies railroads have processes for such permits that vary, just as banks, cellular carriers, and auto dealerships have different processes for opening a bank account, starting a mobile phone contract or buying a car.

Again, Union Pacific supports utility access and expansion and is available to answer questions you may have related to the negative impacts of the proposed language.

Regards,

Nathan Anderson

A handwritten signature in black ink, appearing to read "Nathan Anderson", with a stylized flourish at the end.

Senior Director, Public Affairs